IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV. APPLICATION NO.374 OF 2006

Chandrakant Dada Darekar ..Applicant

Versus

The State of Maharashtra ..Respondent

Mr.S.R.Chitnis, Senior Advocate with Ms.V.R.Raje for applicant

Mr.P.A.Pol, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th December 2006.

P.C.

. This is an application filed by original accused No.2 invoking revisional jurisdiction of

this Court. He accused No.2 is an accused in Special Case No.2 of 1998 on the file of Special Judge, Raigad, Alibag. Prosecution has laid charge sheet alleging commission of offence under section 7, 12, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2. It is not necessary to set out the facts in great details because both sides do not dispute that applicant before me applied for being discharged from the special case. His application was earlier rejected by a cryptic order which was set aside by this Court and an opportunity was given to him to apply for discharge afresh. That application (Exh.7) was made and once again came to be rejected by the impugned order. That is how revisional jurisdiction is invoked.

3. Mr.Chitnis, learned Senior Counsel appearing for applicant submits that the

applicant is not interested in applying for discharge from the above special case. All that he is submitting is that while framing charges a specific grievance was made by the applicant accused No.2 that considering the order of sanction passed in this case so also contents of F.I.R. A charge should be framed appropriately. The charge in this case, according to Mr.Chitnis, is framed by taking into consideration two complaints, one by complainant Asawale and another by complainant Rokade. He submits that as far as complaint of Mr.Rokade is concerned, the sanction order does not refer to the same at all. Thus, there is no sanction in the eyes of law as far as complaint of Rokade is concerned and hence, charges fourthly and fifthly could not have been framed.

4. His further grievance is that as far as charges firstly to thirdly are concerned, the same arises out of complaint made by Asawale. As

far as that complaint is concerned, the allegation is that the complainant approached accused No.1 for making entries in 7/12 extracts pertaining to acquisition of immovable property by his wife. Accused No.1 demanded a bribe for making such an entry and allegedly stated that from the amount which was agreed to be paid he would pay share of the present applicant Accused No.2. That share is 50%, according to complainant. Mr.Chitnis submits that as far as this aspect of the matter is concerned, the charge framed under section 7 is against both accused Nos. 1 and 2. For the ingredients of section 7 to be satisfied, the complaint must be specific. Unless and until, the learned Judge was prima facie satisfied that it is the accused No.2 who made that demand or that the amount was demanded for and on behalf of accused No.2, the charge as framed should not have been framed at all. He submits that, therefore, charges firstly to thirdly could not have been framed in the

manner in which they have been framed and need to be re-casted or re-worded.

5. Learned A.P.P. supports the impugned order which rejects application for discharge. However, he submits that as far as other grievances in the present application are concerned, the same are taken care of by section 216 of Cr.P.C. This provision comes into play even while trying a special case. In his submission, therefore, there is an alternate, equally efficacious remedy available and this court need not exercise its revisional jurisdiction, more so, at this stage.

6. With the assistance of Mr.Chitnis I have perused the revision application, F.I.R. and the annexures thereto, including the impugned order. Mr.Chitnis has strongly relied upon the observations of the Supreme Court in the case of V.C.Shukla Vs. State through C.B.I. reported in

1980 Supp.S.C.C. 92.

7. In my view, the learned Judge while framing the charges ought to have been aware of the mandate of section 211 and the provisions following the same. The contents of charge are set out in section 211. Ultimately, Chapter XVII has a sub-heading "A - Form of charges". However, the section opens with section 211 which deals with "contents of charge". Every charge under the Code shall state the offence with which the accused is charged. If the law which creates the offence gives it any specific name, the offence should be described in the charge by that name only. If the law which creates the offence does not give it a specific name, then, so much of the definition of the offences must be stated so as to give the accused notice of the matter with which he is charged. The law & section of the law against which the offence is said to have been committed shall be mentioned in the charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

8. Thus, the very purpose and object is that the accused may be given notice of the offence with which he is charged. That, he should have such notice is what the law postulates. The manner of putting him to notice is best left to the discretion of the Court. However, in cases of bribery and corruption where public interest is also at stake and in the peculiar facts of this case the learned Special Judge ought to have taken into consideration all materials which are necessary to frame charges. He ought to have been guided by the Principles laid down in the above Supreme Court decision.

9. Since the special Judge is trying the case, it would be improper for me to issue

directions and specify how the charge should be framed. More so, when both sides agree that if an application under section 216 is made, the Special Judge would consider the same in accordance with law.

10. Thus, it would be open for the applicant to invoke the provisions of section 216 of the Cr.P.C. The Court would also take into consideration sub-section 5 of section 216 while dealing with the application to be preferred by the applicant herein. While invoking Court's jurisdiction under section 216, it would be open for the applicant to urge that the charges fourthly and fifthly as framed cannot be framed in the facts of this case. Additionally, it would also be open to point out that the charge as framed under the heads firstly and thirdly, needs to be altered. All such contentions of both sides are kept open and the learned Judge should deal with the application as made,

uninfluened by the order passed on the discharge application. The application should be dealt with strictly in accordance with the powers conferred on the court to alter or re-frame charges and while dealing with the same, learned Judge should not be influenced by dis-inclination of this Court to exercise its revisional jurisdiction.

11. It would be open for both sides to make appropriate submissions and all of them are kept open. The applicant shall apply for altering the charges within two weeks from today. Considering that the special case is pending since 1998, learned Judge to endeavour and dispose of the said application within six weeks from the date of its filing. Needless to add that, if no such application is made, special case to proceed in accordance with law on the basis of the charge as framed.

12. Considering that special case is pending from 1998, after dealing with the application for altering the charge, the learned Judge to endeavour and dispose of the same as expeditiously as possible.

(S.C.Dharmadhikari, J)